United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, September 1, 2021 **Hearing Room 5B**

10:00 AM
8:00-00000 **Chapter**

#0.00 **Hearings on this calendar will be conducted using ZoomGov video and audio.**

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10:00 AM
CONT... **Chapter**

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United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, September 1, 2021 **Hearing Room 5B**

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CONT... **Chapter**

Docket 0

Tentative Ruling:

- NONE LISTED -

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, September 1, 2021 **Hearing Room 5B**

10:00 AM
8:21-10256 BioXXel, LLC **Chapter 11**

#1.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual. LLC
(cont'd from 7-28-21)

Docket 1

Tentative Ruling:

Tentative for 9/1/21:
See #2.

Tentative for 7/28/21:
See #2

Tentative for 3/10/21:
Plan and disclosure deadline July 1, 2021. Claims bar sixty days from dispatch of notice.

Party Information

Debtor(s):

BioXXel, LLC — Represented By
David Wood

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, September 1, 2021 **Hearing Room 5B**

10:00 AM
8:21-10256 BioXXel, LLC **Chapter 11**

#2.00 Confirmation Of Chapter 11 Plan Of Reorganization
(set from disclosure stmt hrg held on 7-28-21)

Docket 87

Tentative Ruling:

Tentative for 9/1/21:
Although certain classes rejected, because no ballot was returned, it appears those classes are unimpaired as there are sufficient funds to pay in full from recent sale of the Murrieta property. Confirm

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Tentative for 7/28/21:
Approve.

Party Information

Debtor(s):

BioXXel, LLC — Represented By
David Wood
Laila Masud
Matthew Grimshaw

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, September 1, 2021 **Hearing Room 5B**

10:00 AM

8:21-11723 Advantage Manufacturing, Inc. **Chapter 11**

#3.00 STATUS CONFERENCE Re: Chapter 11 Subchapter V Voluntary Petition Non-Individual. Inc

Docket 1

***** VACATED *** REASON: OFF CALENDAR - THE CASE HAS BEEN TRANSFERRED TO JUDGE SMITH 7-12-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Advantage Manufacturing, Inc. — Represented By Michael G Spector

Trustee(s):

Robert Paul Goe (TR) — Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, September 1, 2021 **Hearing Room 5B**

10:00 AM

8:21-11775 Fullerton Pacific Interiors, Inc. **Chapter 11**

#4.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition Non-Individuals

Docket 1

Tentative Ruling:

Tentative for 9/1/21:
The court would hear from the trustee about prospects for this case. Is a disclosure statement appropriate or necessary?

Party Information

Debtor(s):

Fullerton Pacific Interiors, Inc. — Represented By Donald W Reid

Trustee(s):

Mark M Sharf (TR) — Pro Se

10:00 AM
8:20-10269 Rafik Youssef Kamell **Chapter 11**

#5.00 Motion For Order Extending Dates And Deadlines In Scheduling Order Regarding Debtor's Filing Of Amended Disclosure Statement And Hearing on Adequacy of Debtor's Amended Disclosure Statement

Docket 189

Tentative Ruling:

Tentative for 9/1/21:

This is the debtor's request for further extension of the deadline for filing of an amended disclosure statement and for the hearing on adequacy of that disclosure. This is not the first requested extension. According to the papers debtor's new tax counsel had a meeting August 9 with IRS but it is not clear how much progress was really made. It does appear that a recent audit suggested that the claim might be overstated but IRS has not amended its filed claim to any agreed amount. Nor has the debtor objected to the claim as filed. There appear to be side issues as to which agency of the government should represent the United States further, IRS or the Department of Justice, and whether the debtor can or should bend to certain demands from IRS. Each side accuses the other of some sort of bad faith. The court is not inclined to get into those granular details or to assign blame. Rather, the big picture is that this is no longer a young case and extensions have already been requested and granted. Each side has its own procedural means to force the question, and while the court is generally sympathetic to negotiations as a more cost efficient means of resolving disputes, that cannot in the end be a substitute for moving this case along. The perception that time is unlimited is sometime an impediment rather than an encouragement for resolution. Besides, plans can be written and confirmed that provide for resolution post confirmation of disputed claims through an estimation process. Grant one final extension of about 60 days.

Party Information

Debtor(s):

Rafik Youssef Kamell — Represented By
Robert P Goe

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, September 1, 2021 **Hearing Room 5B**

10:00 AM

CONT... Rafik Youssef Kamell **Chapter 11**

Movant(s):

Rafik Youssef Kamell — Represented By Robert P Goe

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Wednesday, September 1, 2021 **Hearing Room 5B**

10:00 AM

8:21-11558 Parks Diversified, LP **Chapter 11**

#6.00 Application Of Debtor And Debtor-In-Possession For Authority To Employ Klein & Wilson, As Chapter 11 Special Litigation Counsel

Docket 16

***** VACATED *** REASON: THIS MATTER WILL BE HELD ON 9/22/21 AT 10:00 A.M. PER SECOND AMENDED NOTICE OF HEARING ON APPICATION OF DEBTOR & DEBTOR-IN-POSSESSION FOR AUTHORITY TO EMPLOY KLEIN & WILSON, AS CHAPTER 11 SPECIAL LITIGATION COUNSEL FILED ON 8-18-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Parks Diversified, LP — Represented By Marc C Forsythe

Movant(s):

Parks Diversified, LP — Represented By Marc C Forsythe

11:00 AM
8:21-11558 Parks Diversified, LP **Chapter 11**

#7.00 Motion To Dismiss Bad Faith Unauthorized Bankruptcy Case For Pursuant to 11 U.S.C. Section 1112

Docket 51

Tentative Ruling:

Tentative for 9/1/21:

The movants, Richard and Lucia Parks (collectively "the Parks"), are partners (or at least former partners) of debtor, Parks Diversified, LP ("Debtor"). The motion seeks dismissal of the case as a bad faith bankruptcy filing pursuant to 11 U.S.C. §1112(b). The motion is opposed by Debtor.

1. Factual Background

On May 28, 2002, Lucia K. Parks (aka Lucy Parks), Richard Parks, and David Klein signed a Limited Partnership Agreement forming the Debtor ("Partnership Agreement"). David Klein is the son of Lucy and Richard Parks. The partnership interests were as follows: Lucy Parks, Richard Parks, and David Klein were all general partners of the Debtor, and each individually held a 1% limited partnership interest in the Debtor, and the Parks Family Trust (of which Lucy and Richard are the sole co-trustees) held a 97% limited partnership interest in the Debtor. For convenience the Parks are referred to herein as the "Partners" although current status as general or limited partners is somewhat unclear.

At all times during Debtor's history, the Partners were the sole profit-sharing (and loss-sharing) partners of the Debtor, whereas Klein held a managerial role and assisted his parents in managing the daily affairs of the family businesses. Paragraphs 7.5-7.11 of the Partnership Agreement provide that the intent of the partnership is to create a passthrough entity where taxable income and losses are allocated to the partners according to their partnership shares (set forth in Schedule A to the Partnership Agreement). Pursuant to the schedule, Lucia K. Parks, Richard Parks, and David Klein

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CONT... Parks Diversified, LP **Chapter 11**

each contributed $20,000 of initial capital for a 1% partnership share, and the Parks Family Trust contributed $1,940,000 for a 97% partnership share. Mr. Klein's $20,000 was allegedly given to him by Partners.

After its formation, the Partners acquired (through Debtor, as managing member of North Valley Mall LLC ("NVM")) a shopping center in Chico, California called the North Valley Mall, located at 801 East Avenue, Chico, CA 95926 ("Shopping Mall"). As a result of the economic recession in 2007-08, the family business suffered greatly. As a result, the Partners were informed by Klein around 2009 that he no longer wished to be a general partner of the Debtor, because he did not want to be the sole general partner of the Debtor and liable for all of its debts when the Partners eventually filed their individual bankruptcies.

On September 2, 2009, NVM filed a Chapter 11 petition for bankruptcy, initiating Case Number 8:09-bk-19346-TA ("NVM Bankruptcy"). Lucy Parks signed the bankruptcy petition as a general partner of the Debtor, which was the managing member of NVM. Other bankruptcy pleadings on behalf of NVM were signed by Klein in his capacity as a partner of Debtor (Parks Diversified). In that case a filed declaration states as follows: "I am a partner of Parks Diversified, the property manager of North Valley Mall, LLC, the reorganized debtor in the above Chapter 11 proceeding… and have been responsible for overseeing the day-to-day financial operations and financial performance of the Reorganized Debtor." In the NVM Bankruptcy, a Chapter 11 plan was filed, confirmed, and consummated. The court entered a final decree on March 30, 2015, closing the NVM Bankruptcy.

Paragraph 8.3(D) of the Partnership Agreement provides that "The Partnership shall not dissolve in the event of a GP's bankruptcy. The GP's Interest shall be automatically terminated, and the GP shall be deemed to have exchanged his GP Interest for an LP Interest entitled to the same percentage of capital, profits, and losses." On August 23, 2010, Richard Parks and Lucy Parks filed a joint petition for bankruptcy under Chapter 11 of Title 11 of the United States Code, initiating Case Number 8:10-bk-21738-TA in the United States Bankruptcy Court for the Central District of California ("Individual Bankruptcy"). Upon the filing of the Individual Bankruptcy,

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CONT... Parks Diversified, LP **Chapter 11**

Paragraph 8.3(D) of Debtor's Partnership Agreement provides that the Partners' general partnership interests in the Debtor were terminated and replaced with a commensurate limited partnership interest. In the Individual Bankruptcy, a Chapter 11 plan was filed, confirmed, and consummated. The Court entered an order of discharge and a final decree on September 12, 2014.

The first month after the final decree closing the case, the Partners, as the 99% majority holders of the voting interests in the Debtor constituting Lucy Parks, Richard Parks, and the Parks Family Trust, allegedly voted to reinstate Lucy Parks and Richard Parks as general partners of the Debtor. The vote to reinstate Lucy Parks and Richard Parks as general partners of the Debtor was reportedly done by an informal or oral vote of the majority of the limited partners but was not contemporaneously documented. Thereafter, Lucy Parks and Richard Parks allegedly remained involved in the ordinary governance of Debtor's affairs without objection from Klein.

In 2014, NVM 2 was formed for the purpose of refinancing the loan on the Shopping Mall. The Shopping Mall was transferred from NVM to NVM 2 in connection with the refinance. Ownership of NVM 2 is the same as the NVM (i.e. Klein is a 1% owner of NVM and NVM 2). On September 24, 2020, Klein "individually and derivatively on behalf of TALON DIVERSIFIED HOLDINGS, INC., a California corporation, and NORTH VALLEY MALL II, LLC, a California limited liability company, a California limited liability company" filed a complaint against Richard Parks, Talon Diversified Holdings, Inc. ("Talon"), and North Valley Mall II, LLC ("NVM 2"), alleging breach of fiduciary duty and a demand for accounting, initiating Orange County Superior Court Case Number 30-2020-01161825-CU-NP-CJC ("Derivative Action"). A demurrer was filed, and on March 5, 2021, an amended complaint was filed. Partners filed an answer to the first amended complaint, and a cross-complaint alleging other related claims against Klein. The Derivative Action remains pending in state court.

On December 18, 2020, Lucia Parks filed a complaint against Klein in the Orange County Superior Court initiating Case Number 30-2020-01175309-CU-OR-CJC ("Partition Action"). Essentially, the Partition

Action allegedly seeks to sell property jointly owned by Lucia Parks (2/3rds) and Klein (1/3rd) – Klein lives on the property, but his parents reportedly always made the payments for the property. Klein filed an answer, and that case remains pending in state court.

2. The Bankruptcy Filing

On or around June 21, 2021, Klein sent a letter to the Partners declaring that he was ousting them as limited partners of the Debtor. Pursuant to the Partnership Agreement, allegedly even ousted limited partners retain their economic interests in the partnership. On June 22, 2021, Klein, purporting to act on behalf of Debtor, filed a petition under Chapter 11 of Title 11 of the United States Code commencing this case.

Attached to the petition were multiple representations that Klein was the "sole" general partner of the Debtor, and the Statement of Financial Affairs disclosed that the "former" partners of the Debtor were Lucia Parks as to a 1% interest, Richard Parks as to a 1% interest, and the Parks Family Trust as to a 97% interest (totaling 99%). In Schedule E/F, Debtor did not disclose any known creditor claims.

On June 23, 2021, an Amended Schedule E/F was filed again showing zero dollars of known creditors in the case. On July 12, 2021, Debtor filed an Amended Schedule A/B stating that an asset of the Debtor included "Breach of Partnership Agreement/Fraudulent Transfers against Lucia K. Parks and Richard Parks."

On July 21, 2021, Debtor filed a motion ("Sanctions Motion") for sanctions against Partners for the withdrawal of $20,000 from a bank account in the name of the Debtor on July 8, 2021, requesting an additional $11,495 in alleged compensatory sanctions for remedying the alleged stay violation. The $20,000 was returned fifteen days after it was withdrawn. The court has set a hearing on the Sanctions Motion for September 22, 2021.

On July 21, 2021, Debtor filed four motions for examination under FRBP 2004 to demand production of essentially all corporate documents from

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CONT... Parks Diversified, LP **Chapter 11**

Partners, their accountant, and employee Cheri Lyon from June 1, 2013, to the present. On July 23, 2021, proposed special counsel filed a complaint ("Complaint") against Partners seeking to avoid transfers from as much as 15 years ago under fraudulent transfer statutes and alleging a breach of the Partnership Agreement. The Complaint alleges four claims for relief: (1) breach of partnership agreement ("Breach Claim"); (2) avoidance and recovery of fraudulent transfers pursuant to Section 548 and 550 of the Bankruptcy Code ("Federal UFTA Claim"); (3) avoidance and recovery of fraudulent transfers pursuant to Section 544 and 550 of the Bankruptcy Code, and Cal. Civ. Code §§ 3439.04(a)(2), 3439.05(a) ("State UVTA Claim"); and (4) preservation of avoided transfers pursuant to 11 U.S.C. § 551 ("Preservation Claim").

On July 28, 2021, Debtor filed a Chapter 11 Scheduling and Case Management Conference Report. The status report stated in response to the question of what the debtor hoped to accomplish: "Obtain the necessary financial records to perform a final audit and orderly wind-down of the Debtor pursuant to the Partnership Agreement, determine taxes due by the estate and pay the same."

On August 5, 2021, Debtor filed a Second Amended Schedule A/B. These amended schedules stated that an asset of the Debtor was "Taxable value from North Valley Plaza transaction pursuant to June 2017 Tax Memo." On August 6, 2021, the Franchise Tax Board ("FTB") filed proof of claim no. 1-1 in the amount of $17,585.07 ("FTB Claim"). The FTB Claim was for unpaid $800 annual franchise fees for limited partnerships for approximately five years, plus penalties and interest. As allegedly reflected in Debtor's original and amended Schedules E/F, this claim was neither known nor disclosed.

On August 11, 2021, the Parks paid the FTB Claim in full. Allegedly, no portion of the FTB Claim was for unpaid income taxes. Debtor has allegedly filed all income tax returns that have come due and has paid all taxes owed. Debtor has not yet filed its tax return for 2020 because it is on extension.

3. Legal Authority

"[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate." 11 U.S.C. § 1112(b)(1). "The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if – (1) the interests of creditors and the debtor would be better served by such dismissal or suspension…" 11 U.S.C. §305(a)(1).

4. Was the Bankruptcy Filing Authorized?

At the heart of this dispute is the question of whether Mr. Klein had unilateral authority to file the bankruptcy petition. Mr. Klein's position is that he became the sole partner of Debtor when he expelled the Parks as limited partners on June 21, 2021 for allegedly breaching the Partnership Agreement. The bankruptcy petition was filed the next day. The Parks argue that the timing of the bankruptcy filing should indicate to the court that Mr. Klein was uncertain whether the expulsion of the Parks was legally effective.

It is likely too early to decide whether Mr. Klein had unilateral authority to file Debtor's petition because the issue of whether the Parks breached the Partnership Agreement is not yet before the court. However, breach of the Partnership Agreement is one of the causes of action in the recently filed adversary proceeding. Thus, the authorization to file the bankruptcy petition is an issue that needs to wait for another day. But that is not the only issue presented.

5. Debtor Is Inoperative, Has No Income, and No Known Third-Party Creditors, but is that Cause?

Here, the Parks assert that "cause" for dismissal exists because

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CONT... Parks Diversified, LP **Chapter 11**

Debtor has no operating income or assets aside from a single bank account and claims for relief against the Parks, which the Parks argue are fall under state law, and are outside the statutes of limitations and repose. There is also a claim for breach of Partnership Agreement in one of the pending adversary proceedings. The Parks also point out that, at present, there are no known third-party creditors. Thus, the Parks argue, it does not make sense for the estate to incur expensive administrative fees in a chapter 11 reorganization case when the debtor has no assets and no debts beyond the alleged tax debts.

In opposition, Debtor argues that the Parks took out "loans" from Debtor between 2006 and 2014 and never paid them back. Debtor asserts that the Parks consequently have a negative capital account of nearly $860,000. According to Debtor, Debtor cannot be dissolved without the Parks paying their negative capital accounts to Debtor, which may draw the eye of the IRS and other agencies. Debtor asserts that the Parks have strenuously resisted winding down and dissolving Debtor despite Debtor being out of operation. By taking this money from the partnership and refusing to repay these funds, Debtor argues, the Parks left Debtor unable to pay its creditors, including the applicable state and federal taxing authorities, and unable to reimburse other partners of the partnership that have a positive capital account that is due and owing. Although not explicitly stated, Klein fears that eventually the taxing agencies will assert claims on account of past events or for "negative accounts" and he is left as the likely individual target as surviving partner. This, Debtor asserts, is why the petition was filed.

Debtor's reason for filing the bankruptcy is certainly unusual, but that does not necessarily mean it rises to the level of a bad faith filing. The relevant question is, what is the purpose of the bankruptcy filing? The answers, according to Debtor, appear to be: (1) keeping the automatic stay in place to guard against any siphoning or diversion of Debtor's assets; (2) the possible recouping of debts owed to Debtor, which could happen through this court's power to avoid fraudulent or preferential transfers; and (3) to force Debtor to pay certain alleged tax obligations, perhaps unknown yet but real notwithstanding, which would then allow for the wind down and dissolution of the Debtor partnership. The court is not certain that the bankruptcy process is

necessarily required to accomplish these goals as it seems these issues could (and possibly should) be resolved in state court. Then there is the Parks' assertion that unpaid taxes pass through to the individual partners, which happens independently of the bankruptcy process. However, the automatic stay angle is at least somewhat compelling given the "mistaken" unauthorized withdrawal of Debtor's funds because the court is uncertain whether this was simply honest mistake or something worse. Preservation of estate assets from wrongful withdrawal can be a valid bankruptcy purpose. In any case, this filing does not seem to present a clear abuse of the bankruptcy process.

But that does not mean that this case belongs in chapter 11. The Parks have likely made a good argument for the case to be converted to chapter 7 as there seems to only be speculative hope that a plan for reorganization is possible. Debtor argues that if the money allegedly owed by the Parks to Debtor can be recovered, that money can be used to fund a plan paying off the few creditors that Debtor has. However, if the court understands correctly, Debtor at present has no income, and is inoperative. If this is the case, it would appear that a chapter 7 liquidation would be preferable as there are usually fewer administrative fees associated with a chapter 7. In a chapter 7, Debtor is still protected by the automatic stay, there is forced transparency from Debtor's principals, and the liquidation will assist in facilitating the wind down process. If a compelling reason for Chapter 11 reorganization is to be found, it has not been raised yet. Moreover, it sounds like getting a consensual plan or even a contested plan confirmed would be very problematic.

5. Gross Mismanagement Cause?

Next, the Parks argue that cause exists because Mr. Klein's alleged excessive litigiousness constitutes gross mismanagement of Debtor. The Parks argue that the litigation is causing Debtor to incur heavy administrative fees, which diverts funds that could have been used to pay the FTB claim. As an example, the Parks point to the $20,000 the Parks "mistakenly" withdrew and returned some fifteen days later. The Parks assert that Debtor's counsel

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CONT... Parks Diversified, LP **Chapter 11**

incurred $12,000 in fees in a ten-day period in response to the Parks' alleged mistake. The only result from this, the Parks argue, is that the Debtor now owes $12,000 to counsel. The Parks also argue that under Mr. Klein's management, motions for examination pursuant to FRBP 2004 were allegedly filed almost immediately (allegedly as an improper litigation tactic) and were directed toward the Parks, their accountant, and their office administrator, with only a cursory attempt at a good faith meet-and-confer to obtain requested documents. According to the Parks, under Mr. Klein's direction, the special counsel filed an adversary proceeding, which mooted the FRBP 2004 motions. The Parks also allege that the special counsel filed the adversary proceedings before the court approved the special counsel's employment. Finally, the Parks argue, if Mr. Klein's story that he was the sole general partner of the Debtor from 2009 to the present is true, he is essentially admitting to a decade of gross mismanagement of the Debtor, because he has failed to maintain or obtain any corporate records, and also failed to pay the annual $800 partnership tax owed pursuant to the FTB Claims (which the Parks have now paid).

In opposition, Debtor asserts that the litigation is more than justified and has already provided benefit to the estate, specifically, the return of the $20,000 that was taken by the Parks possibly in violation of the automatic stay. Without intervention, Debtor opines, the Parks may have taken even more funds from Debtor. Debtor also asserts that without the filing of the bankruptcy petition, the FTB liability would likely remain unpaid.

The gross mismanagement argument is not convincing, and the litigation thus far does not seem obviously frivolous such that it would constitute gross mismanagement of Debtor. Thus, dismissal based on Mr. Klein's purported mismanagement of Debtor is not warranted. Moreover, if Mr. Klein is correct that this is the proverbial "calm before the storm" which will eventually break in the form of IRS and other tax agency scrutiny over "negative partnership capital accounts", his proactive approach may be commendable.

6. Should the Court Dismiss or Convert?

For the reasons discussed above, the court does not find that the filing of the bankruptcy petition was unauthorized or in bad faith, at least not at this juncture. The court, however, is inclined to find that there is very little benefit to either Debtor or creditors in this case staying in chapter 11 given its current condition and the issues at hand. Thus, conversion appears entirely appropriate. But that could change if the state court litigation and the adversary proceeding result in any recovery for the estate. The court understands that the current state court litigation is unlikely to result in any recovery that directly benefits the estate. Also, in the recent motion to employ Debtor's counsel this court made known its skepticism that this case belonged in chapter 11. The major counterpoint goes to the question of energy and commitment. Debtor may argue that a Chapter 7 trustee will not be motivated to pursue litigation and the other things that Mr. Klein's management will pursue in what might appear to be a "no asset" case. The court will hear argument on the point.

7. Should the Court Abstain?

When deciding whether abstention is appropriate, the court should consider the following factors:

(1) the economy and efficiency of administration; (2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court; (3) whether federal proceedings are necessary to reach a just and equitable solution; (4) whether there is an alternative means of achieving an equitable distribution of assets; (5) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case; (6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and (7) the purpose for which bankruptcy jurisdiction has been sought. *Marciano v. Fahs (In re Marciano)*, 459 B.R. 27, 46-47 (B.A.P. 9th Cir. 2011).

Debtor argues that there does not seem to be any reason for this court

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CONT... Parks Diversified, LP **Chapter 11**

to abstain under 11 U.S.C. 305. Debtor notes that the claims bar date has not yet run, so it is conceivable that more claims could be filed. Thus, Debtor argues, it is premature to cast this case as a two-party dispute. There is also the pending adversary proceeding to consider that combines issues of state law and bankruptcy law that could be efficiently adjudicated by this court rather than by piecemeal litigation. Again, the court understands that there are already two cases pending in state court between the partners, but the court is under the impression that those cases will only likely have an indirect impact on this bankruptcy case despite implicating the same or similar operative facts. If this impression is mistaken, then perhaps the analysis changes. Thus, abstention is likely not warranted at this point.

Convert to chapter 7 pursuant to 11 U.S.C. §1112(b)(4) (substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation).

Party Information

Debtor(s):

Parks Diversified, LP — Represented By
Marc C Forsythe

11:00 AM
8:19-12480 Guy S. Griffithe **Chapter 7**
Adv#: 8:19-01199 Samec v. Guy Griffithe Et.Al

#8.00 Plaintiffs Joseph Samec And Brenda Samec's Motion To Compel Further Responses And Production Of Documents Set Two, From Defendant And Sanctions Against Defendant, In An Amount Deemed Appropriate By The Court **(cont'd from 7-01-21)**

Docket 69

Tentative Ruling:

Tentative for 9/1/21:
This matter was continued from July 1 but after admonition from the court the only additional material filed was a unilateral status report from defendant. This does not portend well for future of this adversary proceeding as a whole. As is there is little for the court to do but deny this motion.

Tentative for 7/1/21:
This is plaintiffs Joe and Brenda Samec's ("Plaintiffs") motion to compel further responses and production of documents set two, from defendant and sanctions against defendant, in an amount deemed appropriate by the court. The motion is opposed by debtor/defendant Guy S. Griffithe ("Defendant").

This motion, like the adversary proceedings as a whole so far, is something of a substantive and procedural disaster. This is not a surprise as Plaintiffs are attempting to prosecute their case in pro se, which was always going to pose challenges. This is especially so in something as nuanced and technical as the discovery phase of litigation.

LBR 7026(c)(2) states:

> Prior to the filing of any motion relating to discovery, the parties must meet in person or by telephone in a good faith effort to resolve a discovery dispute. It is the responsibility of the

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CONT... Guy S. Griffithe **Chapter 7**

moving party to arrange the conference. Unless altered by agreement of the parties or by order of the court for cause shown, the opposing party must meet with the moving party within 7 days of service upon the opposing party of a letter requesting such meeting and specifying the terms of the discovery order to be sought.

Unfortunately for Plaintiffs, it appears that the two sides have not actually met and conferred, though Plaintiffs assert that several attempts to do so have been made. Indeed, Plaintiffs assert that no fewer than five attempts to meet and confer with Defendant's counsel have been made since early May of 2021. Plaintiffs concede that Defendant's counsel did finally answer, but the tone of his communication was purportedly argumentative and not responsive. Apparently, this correspondence did not result in a discovery conference taking place or even being scheduled. Plaintiffs and Defendant provide copies of their "meet and confer" correspondence. Defendant points out that, rather than trying to schedule a discovery conference, the correspondence mainly expressed frustration at Defendant's perceived lack of effort to comply with the discovery requests in good faith, and was not interpreted as a meet and confer letter in the traditional sense. Defendant, therefore, argues that the meet and confer letters should largely be ignored for purposes of this motion. Upon review, the meet and confer letters, although so titled, read more like demand letters and less like invitations to actually meet and work through the various discovery issues.

Plaintiffs also assert that they placed phone calls to Defendant's counsel ostensibly to arrange a meeting, and left messages that went unreturned. Unfortunately, the content of those phone calls and messages is not provided except indirectly in Mr. Samec's declaration. There does not seem to have been any agreement or order of this court that would supersede the local rule quoted above. Thus, the motion should likely be denied for failure to comply with LBR 7026-1(c)(2).

The motion is also likely procedurally improper under LBR 7026-1(c)(3), which states:

If the parties are unable to resolve the dispute, the party seeking

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CONT... Guy S. Griffithe **Chapter 7**

discovery must file and serve a notice of motion together with a written stipulation by the parties.

(A) The stipulation must be contained in 1 document and must identify, separately and with particularity, each disputed issue that remains to be determined at the hearing and the contentions and points and authorities of each party as to each issue.

(B) The stipulation must not simply refer the court to the document containing the discovery request forming the basis of the dispute. For example, if the sufficiency of an answer to an interrogatory is in issue, the stipulation must contain, verbatim, both the interrogatory and the allegedly insufficient answer, followed by each party's contentions, separately stated.

(C) In the absence of such stipulation or a declaration of a party of noncooperation by the opposing party, the court will not consider the discovery motion.

Here, no such stipulation accompanied this motion. There was also no declaration of noncooperation by Defendant. Much to the contrary. Defendant asserts that he at least attempted to comply with the discovery requests. Thus, the motion should be denied for failure to comply with this local rule as well.

The parties still need to meet and confer. Plaintiffs' pro se status is not supposed to factor in the rules, but as a practical matter, it does. Without representation, valid discovery defenses might be misconstrued as bad faith evasion tactics leading to less clarity in the record instead of more. However, there is some chance an actual good faith meet and confer conference could resolve various sticking points in this motion (or at least narrow the issues and restore a degree of cooperation). At the very least the parties must list all of the requests, the documents actually presented as exhibits, and the arguments factual and/or legal as to whether what is produced is (or is not) sufficient, and all reasons why.

11:00 AM

CONT... Guy S. Griffithe **Chapter 7**

Sanctions do not appear warranted at this time but Plaintiffs are urged to retain counsel for this important and complex phase of the litigation. Defendant is also warned that legalistic tactics that can be perceived as uncooperative or evasive will also not be well received. Good faith cooperation is what is required. Discovery disputes can be vexing under even the best conditions. It is also easy to run afoul of the Local Rules, as Plaintiffs have likely done here. However, persistent noncompliance on either side will not be viewed lightly. If such recurs, the resort to sanctions may be reconsidered.

Continue to August 26 @ 11:00 a.m.

Party Information

Debtor(s):

Guy S. Griffithe	Represented By Bert Briones Laurie Schiff

Defendant(s):

Guy Griffithe Et.Al	Represented By Laurie Schiff Ralph C Shelton II

Plaintiff(s):

Joseph Samec	Pro Se

Trustee(s):

Thomas H Casey (TR)	Pro Se